IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/12/2003

CORAM

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM
AND
THE HONOURABLE MR.JUSTICE S.ASHOK KUMAR

W.P.No.20425 of 1999
and W.P.No.8121 of 2003,
W.A.No.794 of 2002 and Cont.P.No.368 of 2003

W.P.No.20425 of 1999:

R.Karuppan .. Petitioner

-Vs-

1. The Patron of Chennai Rifle Club,
Raj Bhavan,
Chennai.

2. Kalimuthu,
The President of the Chennai Rifle Club,
Egmore,
Chennai-8.

3. Ramanathan,
Deputy Commissioner of Police,
Egmore,
Chennai-8.

4. Sivanthi Adithyan,
Secretary,
Chennai Rifle Club,
Chennai.

5. The State of Tamil Nadu,
rep. by its Chief Secretary,
Fort St. George, Chennai-600 009.

6. The Sports Development Authority of
Tamil Nadu,
rep. by its Member Secretary,
116-A, Periyar E.V.R.High Road,
Nehru Park,
Chennai-84. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus, as stated therein.

For petitioner : Mr.R.Karuppan - Petitioner in person

For respondents: Mr. N.R.Chandran, Advocate General, Amicus Curiae.

Mr.P.S.Raman for R-4

Mr.K.Muralidharan, Govt.Advocate for
Mr.V.Raghupathi, Government Pleader
for R-5
Mr.R.Srinivas for R-6
No appearance for RR-1 and 2

W.P.No.8121 of 2003:
R.Kaaruppan ..
Petitioner
vs.
1. The National Rifle Association of India,
rep. by its Secretary Balijeeth Singh Sethi,
Jawaharlal Nehru Stadium,
New Delhi.

2. B.Sivanthi Adithyan, Senior Vice-President,
National Rifle Association of India,
Jawaharlal Nehru Stadium, New Delhi.

3. The Sports Authority of India,
rep. by its Secretary,
Sasthri Bhavan,
New Delhi. ..
Respondents
Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus, as stated therein.

For petitioner : Mr.R.Karuppan - Petitioner in person
For respondents : Mr.P.S.Raman for RR-1 and 2

Mr.J.Madanagopal Rao, SCGSC for R-3

W.A.No.794 of 2002 :
R.Karuppan ..
Appellant
vs.
1. The National Rifle Association of India,
rep. by its Secretary,
Nehru Stadium,

New Delhi.

2. Sivanthi Adithyan,
Secretary,
Chennai Rifle Club,
Chennai. ..
Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order of this Court dated 20-10-2000 in W.P.No.3252 of 2000.
For appellant : Mr.R.Karuppan, Appellant in person
For respondents : Mr.P.S.Raman

Cont.P.No.368 of 2003 :
R.Kaaruppan .. Petitioner

vs.

1. Baljit Singh Sethi,
Secretary General,
The National Rifle Association of India,
Nehru Stadium,
New Delhi - 110 003.

2. Sivanthi Adithyan,
Secretary,
Chennai Rifle Club,
Rani Building,
Poonthamallee High Road,
Chennai-600 007. ..
Respondents

Contempt Petition filed under Section 2(c) read with 10 and 12 of the Contempt of Courts Act to punish the respondents, as stated therein.

For petitioner : Mr.R.Karuppan  Petitioner in person
For respondents: Mr.P.S.Raman

:O R D E R

M. KARPAGAVINAYAGAM, J.

There are two writ petitions and one writ appeal filed by Mr. Karuppan, the petitioner herein as party-in-person.

2. The prayer in W.P.No.20425 of 1999 is for a Mandamus directing the respondents for vesting the Chennai Rifle Club with the State Government and for further directions.

3. The other writ petition is W.P.No.8121 of 2003 wherein the prayer has been made for direction to the respondents to conduct a coaching camp well

in advance to the maximum duration.

4. W.A.No.794 of 2002 would relate to the appeal against the order passed in W.P.No.3252 of 2000 assailing the same on the ground that permission for withdrawal of the writ petition was given to the petitioner without giving opportunity to file a fresh petition.

5. Besides these, the petitioner/party-in-person filed another petition as a contempt petition in C.P.No.368 of 2003 requesting to take contempt action against Sivanthi Adityan, the fourth respondent in W. P.No.20425 of 1999 for having given false particulars in his counter.

6. The case of the petitioner as culled out from the affidavit of W.P.No.20425 of 1999 is as follows:
"The petitioner was a member of the Chennai Rifle Club. Sivanthi Adityan, the fourth respondent is the Honorary Secretary of the said Club. Though the range, machinery and buildings belong to the Government, Sivanthi Adityan named the said range after him. This was done without any authorisation from the Government in order to siphon off money from the Government. So, the petitioner gave a complaint to the Patron of Chennai Rifle Club on 27.11.1998. When permission was denied to the petitioner for participating in the National Tournament by the National Rifle Association of India, the petitioner filed W.P. No.542 of 1999 stating that Sivanthi Adityan, the fourth respondent did not allow the petitioner and other members to have an access to the ranges and the equipments belonging to Tamil Nadu State. On 15.6.199 8, the petitioner received a communication from Sivanthi Adityan, stating that he defaulted in payment of subscription to the Chennai Rifle Club and asking him to make the payment of Rs.1,000/- as entry fee along with the subscription on or before 30.6.1998. Though the said amount was not paid, a Demand Draft for Rs.1,500/- was sent on 14.7.1 998. On 5.8.1998, he received a communication from Sivanthi Adityan acknowledging the receipt of the amount and informing him that the matter would be placed before the Committee for decision. On 6.1.1999, a letter was received from the Commissioner of Police, Ex-officio President of Chennai Rifle Club stating that pending consideration of his membership in the range, the petitioner will be permitted to take part in the Rifle Club Shooting Range. Despite that, he was not allowed to use the range. The petitioner is not only a member of the Chennai Rifle Club, but also has been winning laurels to the Club, both National and International Championship. The petitioner has already won a silver medal in the International competition. Since the range has been used by Sivanthi Adityan as if it is his own personal property without distributing the ammunition to the petitioner as well as to other members, the entire range and machineries shall be vested with the Government.

7. In this petition, there are five respondents. The first respondent is the Patron of the Chennai Rifle Club. According to him, through his coutner-affidavit, the petitioner has been continuously approaching this Court by misusing the due process of law making several false allegations and obtaining the interim orders to participate in several events even without

being a member of the Club. The petitioner has been already expelled from membership of the Club as per rules. His name has been struck off from the register as per Section III, Rule 3(k) of the Rules of the Club. The petitioner is not entitled to participate in any event conducted by the first respondent, since more than three years have elapsed since his date of expulsion.

8. According to the respondents 2 and 3, the President of Chennai Rifle Club, the Commissioner of Police and the Deputy Commissioner of Police respectively, the writ petition is not maintainable, as the respondents 1 to 4 are not charged with any public duty nor can be considered as a 'State' within the meaning of Article 12 of the Constitution. Chennai Rifle Club is neither controlled by the State nor governed by any State. The land belonging to Sivanthi Adityan was offered for the construction of additional range for the use of Chennai Rifle Club and additional construction was done only by Sivanthi Adityan. No amount was spent by the Chennai Rifle Club or by the Government for the said construction. He neither challenged the expulsion from the Club nor asked for re-admission within the period of three years. The petitioner has not come with clean hands for a bona fide cause. Therefore, no relief could be granted to him."

9. The case of Mr.Sivanthi Adityan, the fourth respondent through his counter-affidavit is as follows:
"The entire grievance is one relating to the petitioner's expulsion from the Club for non-payment of subscription. Without challenging the order, the petitioner has filed writ petition as a Public Interest Litigation by abusing the process of court. The Chennai Rifle Club is not a State or an instrumentality or agency of the State under Article 12 of the Constitution. Therefore, the writ petition is not maintainable. Already, the Supreme Court decided that no writ will lie against the Club in S.L.P.Nos.1072 and 1072 of 2000. The Range-A was named after the fourth respondent Sivanthi Adityan only on the decision taken by the members of the Club. The petitioner has never represented India in any International competition. The allegations made against the fourth respondent and his son are all totally untrue."
10. The fifth respondent, the State of Tamil Nadu has filed the counter through the Deputy Secretary to Government on behalf of the Chief Secretary. The contents of the same are as follows:
" The respondents 1 to 4 are not charged with any public duty. Therefore, no writ petition is maintainable. The adjoining patta land belonging to Sivanthi Adityan was offered to Chennai Rifle Club. The same was handed over for the construction of the additional range by the own efforts of the said Sivanthi Adityan. The Government did not spend any money. Since Chennai Rifle Club is an autonomous body, there is no question of authorisation from the Government for naming the range. So, the State Government has no jurisdiction or control over the affairs of the Club. Thus, Writ of Mandamous cannot be issued."

11. Now, we shall come to W.P.No.8121 of 2003. The prayer in this petition is for Writ of Mandamous for direction to the respondents, namely National Rifle Association of India, B.Sivanthi Adityan and the Sports Authority of India, to conduct the coaching camp well in advance and to direct

for award of Rs.50 lakhs each for the actual and punitive damages, etc.

12. The case of the petitioner in this petition is as follows:
"Earlier, the petitioner filed a writ petition against the respondents. On the suggestion of compromise mooted by the counsel for the respondents 1 and 2 and on the assurance that the petitioner would be extended with all facilities and cooperation to use the range and participate in the events, the petitioner withdrew the writ petition. However, such promises were not kept up. The petitioner was not permitted to take part in the Master's Cup competition and straightaway he was made to take participate in the selection competition. Due to lack of training, he was not able to fare well. However, he bettered his national rank from 9th position to 6th position. Instead of selecting the petitioner to represent the country at the World Cup, they coached another person and sent him who did not even participate in the shooting championship. Therefore, the petitioner has approached this Court for direction directing the respondents to conduct coaching camp well in advance and to conduct selection trials to select the Indian team just on the eve of International Meet."

13. According to the first respondent, National Rifle Association of India, New Delhi through its counter, the Apex Court has already held that as between the same parties, the writ petition is not maintainable and the specific observation by the Apex Court is that the writ is not maintainable against the National Rifle Association of India. Even when this writ petition was admitted, this Court had taken note of the judgment of Apex Court and merely admitted for verification whether Sports Authority of India, the third respondent has any role to play in the prayer. The fact that the petitioner has got 9th place in the National Games in Hyderabad, is true. But, the shooting championship for the National Games is organised as an inter-state team event in a different format from that adopted by the International Shooting Sports Federation. Therefore, for the purpose of National team selection and other connected purposes, the ranking in the National Games cannot be taken into consideration.

14. The second respondent Sivanthi Adityan being the Vice President of the first respondent has filed a counter adopting the stand taken by the first respondent.

15. The third respondent, Sports Authority of India, New Delhi would state in its counter as follows:
"The Sports Authority of India has no role in conducting trials or making selections for the National teams or for the sports persons. The Sports Authority of India has no say or any control over the National Rifle Association of India, which is an independent autonomous body. National Rifle Association of India has to conduct national competitions, trials and selection and nominates sports persons for coaching camps and the Sports Authority of India, the third respondent only provides facility to the Shooting Range. As such, no coaching camp is granted by the third respondent.

16. We will now deal with W.A.No.794 of 2002.

17. The appellant filed W.P.No.3252 of 2000 for the issue of Mandamus against the respondent to conduct National Shooting Championship without insisting the membership card of some Rifle Club.

18. According to the appellant, the party-in-person, he filed the above writ petition and the same is pending and during the pendency, Sivanthi Adityan asked him to withdraw the same as the matter could be compromised. Therefore, he requested this Court to allow him to withdraw the writ petition with a liberty to file a fresh petition. However, the Writ Court merely dismissed the writ petition without giving such a liberty, even though the petitioner was not present in the Court on that day. Challenging the same, the writ appeal has been preferred by the appellant contenting that the writ petition ought not to have been dismissed without giving liberty to the appellant by filing a fresh petition while withdrawing the writ petition.

19. According to the respondent, the petitioner was not present in the Court when the order was passed and as such, the respondent cannot be accused of having opposed the liberty to file fresh petition and the prayer in the writ petition also is not maintainable in view of the order of the Supreme Court in S.L.P.Nos.1072 and 1073 of 2000.

20. We will now take up the contempt petition in Cont.P.No.368 of 20 03.

21. According to the petitioner, the party-in-person, the equipments and Range, both belong to the Tamil Nadu State and without any authority, Sivanthi Adityan installed them in his place and Sivanthi Adityan had stated in his counter in W.P.No.542 of 1999 as if the same was his private property and so, this statement is belatedly lie and having said so in W.P.No.542 of 1999, he has filed a counter-affidavit in W.P.No.20425 of 1999 stating that he ensured that sufficient funds were generated through well-wishers for construction of the shooting ranges and as such, Sivanthi Adityan has misled the Court earlier and uttered falsehood that the land belongs to him exclusively and also the Range building belongs to him. This demonstrates his lack of honesty and bona fide. Further, the promise that was given that the petitioner would be given all concessions, while withdrawing W.A.No.794 of 2002 and W.P.No.20425 of 1999, was not kept up. Hence, this petition for contempt.

22. Sivanthi Adityan, the second respondent in the contempt petition opposed the petition contending that there is no variation between his counter-affidavits filed in W.P.No.542 of 1999 and W.P.No.20425 of 1999. It is his consistent case that Range-B belongs to the Government and Range-A land belongs to him and the construction was done by him exclusively out of his money as well as the money collected from his well-wishers and neither the building nor the lands belong to Rifle Club and as such, there is no false statement. While W.P.M.P.No.35 34 of 2003 and W.A.M.P.No.543 of 2003 in W.P.No.20425 of 1999 and W. A.No.794 of 2003 were taken up for hearing, the petitioner did not conduct himself properly in the Court and the same was adversely commented upon by the Division Bench of this Court consisting of

V.S. Sirpurkar, J and F.M.Ibrahim Kalifulla, J, while the final order was passed and costs of Rs.2,000/- was imposed condemning his act, however, the same was not paid. On the other hand, the petitioner published one issue of news letter, called FLAWS making scandalous allegations against the conduct of the Hon'ble Chief Justice and also against Justice V.S.Sirpurkar and the same was openly distributed in the corridors of this Court and the newsletter was personally served on the counsel for the respondent by the petitioner himself. As such, this conduct of the petitioner would amount to contempt and suitable proceeding has to be initiated against him.

23. We have heard the arguments from the party-in-person and from the counsel for all the respondents at length. We have given our anxious consideration to their respective submissions.

24. The main objection raised by the counsel for the respondents in the writ petitions is that the writ is not maintainable as against the respondent since the respondent is not an instrumentality or agency of a State under Article 12 so as to be amenable to writ jurisdiction under Article 226 of the Constitution of India. On the other hand, Mr.Kaaruppan, the party-in-person would cite number of authorities to establish that the writ is maintainable. Similarly, Mr.P.S.Raman, the counsel for the respondent also would cite several authorities to substantiate his contention with regard to the maintainability of the writ petition. With a view to decide the maintainability question, this Court issued notice to the Advocate General to elaborate on this point and to give his opinion in the light of various judgments of this Court as well as the Supreme Court with regard to the point in question.

25. In pursuance of the notice issued by this Court, the learned Advocate General would appear before this Court and cite number of authorities for both the propositions. The judgments cited by him for the proposition that the writ is maintainable, are as follows:
(i) ROHTAS INDUSTRIES vs. ITS UNION (AIR 1976 SC 425) ;
(ii) SHRI ANADI MUKTA SADGURU S.M.V.S.J.M.S.TRUST vs. V.R.RUDANI (AIR 1989 SC 1607) ;
(iii) MADRAS LABOUR UNION vs. BINNY LIMITED (1995 (I) C.T.C. 73) ;
(iv) SOUTH ARCOT DIST. CENTRAL CO-OP. BANK LTD. EMPLOYEES ASSN. vs. DEPUTY COMMISSIONER OF LABOUR (1998 (III) C.T.C. 143) ;

(v) U.P. STATE CO-OPERATIVE LAND DEVELOPMENT BANK LTD. vs. CHANDRA BHAN DUBEY ( 1999 (I) C.T.C. 467 ) (SC) ;

(vi) THANIKACHALAM.M. vs. MADURANTHAKAM AGRICULTURAL RODUCERS CO-OPERATIVE MARKETING SOCIETY (FB) ( 2000 (IV) C.T.C. 556 ) ;

(vii) SEKKILAR vs. KRISHNAMOORTHY ( 1951 (II) M.L.J. 568 ) ;

The above judgments would show that the Mandamous can be issued to any person or authority performing public duty and the same will lie even against a

private party under special circumstances.
26. Similarly, the Advocate General would cite following three decisions, where the guidelines have been issued by the Supreme Court that the private institute is not a State and therefore, the writ is not maintainable:
(i) VST INDUSTRIES LTD. vs. VST INDUSTRIES WORKERS' UNION ( 2001 (1) S.C.C. 298 );

(ii) MYSORE PAPER MILLS LTD. vs. MYSORE PAPER MILLS OFFICERS ASSOCN.(AIR 2002 SUPREME COURT 609 );

(iii) G.BASSI REDDY vs. INTERNATIONAL CROPS RESEARCH INSTT. (AIR 2003 SUPREME COURT 1764 ).

27. Before dealing with this question in the light of the citations referred to above, it would be better to refer to the orders passed by this Court as well as the Apex Court relating to the same question between the parties.

28. The Apex Court in S.L.P.Nos.1072 and 1073 in which similar issue has been raised between the same parties and decided on 21.1.2000, passed the following order:
"We do not think that a writ petition would lie against the first respondent and there is nothing in the writ petition which suggests that it would or even avers that it would. Secondly, we do not think that it is for this Court to interfere in decisions as to who should or should not be a representative of the country in a sporting event.
The Special Leave Petitions are dismissed."

29. In the light of the said order, W.P.No.7975 of 2001 filed by the same petitioner against one of the respondents was dismissed by Shanugam, J. on 19.6.2001 stating that writ is not maintainable. The relevant observation is as follows:
"In my view, the above writ petition is not maintainable on more than one grounds. Firstly, the relief sought for is for a declaration that the respondents should not conduct the championship from 9th April to 18th April. The competition has already been over and therefore, without quashing the competition and its results, the prayer cannot be sustained.
Secondly, the counsel taking notice on behalf of the first respondent furnished before me a copy of the order of the Supreme Court in S. L.P.Nos.1072-1072/2000 dated 21.01.2000, wherein the petitioner's Special Leave Petitions were dismissed. ..... The judgment between the inter-se parties is binding on the petitioner as well as this Court. The petitioner has not made out any case or averred, as set out in the Supreme Court's order that the writ petition will lie against the first respondent."

30. Likewise, the Division Bench of this Court consisting of V.S. Sirpurkar, J and F.M.Ibrahim Kalifullah,J dismissed W.P.M.P.No.3534 of 2 003 and W.A.M.P.No.543 of 2003 in W.P.No.20425 of 1999 and W.A.No.794 of 2002 which arose out of the same proceeding, and declined to grant interim relief, by the order dated 4.2.2003 on the same ground in the light of the observation of the Apex Court. The relevant portions of the order of the Division Bench

are as follows:
"In response to the above said contentions, Mr.P.S.Raman, learned counsel appearing for the 4th respondent would contend that since the Hon'ble Supreme Court has held that the writ itself was not maintainable, there is no scope for considering any of the prayers of the petitioner in these Miscellaneous Petitions.
We find force in the contentions of the learned counsel.
Further as regards the petitioner's contention that there was a similar Division Bench order in W.M.P.No.30005 of 1999 in this very Writ Petition dated 28-12-1999 and that the same benefit should be extended this time also, it will have to be held that even that cannot also be considered in his favour, in view of the final orders passed in that very W.M.P. on 10-2-2000 holding that when the petitioner has filed a public interest litigation, he could not be permitted to have a relief in the W.M.P. to quench his personal grievances. "

31. Similarly, this Court consisting of the Hon'ble the Chief Justice and Justice K.Govindarajan, while admitting W.P.No.8121 of 2003 and declining to grant interim relief, would refer to S.L.P.Nos.1072 and 1073 of 2000 dated 21.1.2000 and would hold in the order dated 28.3.2003 that the writ petition is not maintainable against the first respondent, namely the National Rifle Association of India as held by the Supreme Court order and the writ petition against the second respondent would not lie as he is a Vice President of the National Rifle Association of India. However, the writ petition was admitted by the Division Bench as far as the third respondent is concerned in order to verify that the third respondent, namely the Sports Authority of India, New Delhi has got any role or control in the affairs of the first respondent, namely the National Rifle Association of India. It is also observed in the said order that unless it is held emphatically that the first respondent, the National Rifle Association of India is controlled by the third respondent, the Sports Authority of India, New Delhi, it is not possible for this Court to issue any direction as the main issue can be settled only in the writ petition.

32. Therefore, the First Bench as well as the Second Bench, while dealing with the interim applications in W.P.No.8121 of 2003 and in W. A.No.794 of 2002 and W.P.No.20425 of 1999 respectively, would hold that in the light of the observation made by the Apex Court in S.L.P. Nos.1072-1073 of 2000 between the parties concerned, the writ is not maintainable.

33. In the light of the above observation of the two Benches of this Court, we are asked to consider the question again.

34. As correctly pointed out by the Advocate General, it is the ratio decidendi observed by the Apex Court that if the rights are purely of a private character, no mandamus could be issued and if the management is purely a private body with no public duty, mandamus would not lie.

35. It is also held by the Supreme Court that the question in each case would be - whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or

under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found, then the body is a State within the Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.

36. Further, in some of the other decisions rendered by the Supreme Court, it is held that writ would lie even against a private party, but in such cases, the writ is maintainable where the private party was discharging a public duty or a public function and where the monstrosity of the situation which affects the rights of a citizen need to be remedied.

37. So, there is no difficulty in holding that the Chennai Rifle Club or the National Rifle Association of India would not be construed to be a State within the meaning of Article 12 of the Constitution.
38. The only point is whether the respondent who is considered to be a private party has been discharging a public duty or public function and whether the monstrosity of the situation would affect the right of the party-in-person, the petitioner herein.

39. According to the respondents, the Chennai Rifle Club does not perform any public duty nor does it have a public duty and there is no monstrosity in the running of the Club requiring interference in the writ jurisdiction. It is the specific case of the respondent Sivanthi Adityan that Range-A has been put up by him in his personal property without any financial assistance from the State and the same was offered to the Chennai Rifle Club for its use. Further, it is stated that there is no other proven misconduct or maladministration requiring the Club to be vested with the State as prayed for in W.P.No.20425 of 1999.

40. Mr.Karuppan, though would elaborately argue on the basis of several decisions, would not be able to give any material to show that the Chennai Rifle Club has been performing any public function or it has a public duty. Further, no material was placed to show that there is misconduct or maladministration in the Club requiring the Club to be acquired by the State nor there is monstrosity of the situation which would affect the right of the petitioner. Similarly, there is nothing to indicate that this is a Public Interest Litigation, especially when the party-in-person has obtained personal benefits through the interim orders and subsequently, when he chose to withdraw the writ petitions on the assurance given by the respondent that he would be given concessions and further, on feeling aggrieved that full concessions have not been given to him by the respondent, he thought it fit to approach the First Bench to restore the writ petitions and writ appeal though they were earlier withdrawn.

41. As stated earlier, while the interim applications were dealt with by the First Bench as well as the Second Bench in these writ petitions, namely W.P.No.20425 of 1999 and W.P.No.8121 of 2003 and W.A.No.7 94 of 2002, they have followed the observation made by the Supreme Court in S.L.P.Nos.1072-1073 of 2000 dated 21.1.2000. Under those circumstances, we are unable to take a different view from that of the First Bench and the Second Bench, that too,

when the said finding was given on the basis of the Apex Court's decision which is binding on this Court also.

42. The wording contained in S.L.P.Nos.1072-1073 of 2000 would not be said that the ratio has not been decided. On the other hand, in the absence of any material to show that Chennai Rifle Club would come under the State, we cannot hold otherwise. Therefore, we are constrained to hold that these writ petitions are not maintainable.

43. Even in spite of our above view that the writ is not maintainable, we thought of suggesting to the Chennai Rifle Club to consider his re-admission as it is claimed by Mr.Karuppan that he won several medals in the National Shooting Championship from 1992 to 2002 and as such, he must be given opportunity to go and participate in the National level as well as in the International level so that he would get a name for India in the International level. Therefore, we directed the counsel for the respondents Mr.P.S.Raman to collect the particulars about the performance record of the petitioner Mr.Karuppan in the National and State Level Championship from the beginning till date. Accordingly, the counsel for the respondents collected the datas and filed a memo giving the details which are as follows:

"National Shooting Championship conducted by the National Rifle Association of India:

S.No. Year Event Score Rank
1 37th NSCC Oct,1994 Trap 87 20/28
2 38th NSCC 1995 Trap 75 17/24
3 39th NSCC Feb,1996 Trap 87 15/28
4 40th NSCC Jan,1997 Trap 89 13/30 (Team won Bronze medal)
40th NSCC Jan,1997 Skeet 15 15/21

5 41th NSCC 1998 Trap 71 20/27
6 42th NSCC 1999 Trap 97 8/18
42th NSCC 1999 Double Trap 72 16 /26
42th NSCC 1999 Skeet 68 No rank

7 46th NSCC Dec,2002 Trap 84 20/22
46th NSCC Dec,2002 Double Trap 86 23 /27

STATE LEVEL CHAMPIONSHIP CONDUCTED BY THE CHENNAI RIFLE CLUB

S.No. Year Event Score Rank
1 26th TNSCC Oct,2000 Trap 28/50 4/17
26th TNSCC Oct,2000 Double Trap 26/50 4/15
26th TNSCC Oct,2000 Skeet 19/50 6/17

2 28th TNSCC Jan,2002 Trap 30/50 4/12

28th TNSCC Jan,2002 Double Trap 23/50 6/14
28th TNSCC Jan,2002 Skeet 21/50 7/18

3 29th TNSCC Oct,2002 Trap 29/50 6/18
29th TNSCC Oct,2002 Double Trap 35/50 3/16 (Bronze)
29th TNSCC Oct,2002 Skeet 24/50 7/19
No State level championships were held between 1993 to 1998.
In the last tournament (24th TNSCC) Mr.Karuppan won gold medal in Trap in 1992."

44. These details would make it clear that Mr.Karuppan won gold medal in Trap in 1992 and Bronze medal in the year 2002 in Double Trap. In other events, he has received some ranks, but did not enter into the Topper's list. But, these details would certainly show that he has got sufficient talent in shooting. The data given in the memo would reveal that he participated both prior to the filing of the writ petition and also participated in the Shooting Championship in pursuance of the interim reliefs granted by this Court in various writ petitions and obtained some ranks and medals.

45. As a matter of fact, the First Bench of this Court while declining to grant the interim relief in W.P.No.8121 of 2003 on 28.3.2003 and expressing the doubt about the maintainability of the writ petition, would complement Mr.Karuppan by observing that there is no doubt in the talent of Mr.Karuppan in shooting.

46. On this basis, we felt that it would be appropriate to give suitable suggestion to the Chennai Rifle Club to give opportunity by readmitting him as a member and also encourage him so as to enable him to participate in the National level as well as in the International level. However, this aspect would be considered later.

47. In Contempt Petition No.368 of 2003, the main point that has been taken by the party-in-person, the petitioner herein is that the respondent Sivanthi Adityan has misled the Court by making a misstatement in the counter-affidavits filed in W.P.Nos.542 of 1999 and 20425 of 1999.

48. On going through the counter-affidavits referred to above, it is clear that the respondent's stand regarding the personal ownership of the land and the building in the Range-A is consistent. It is also seen from the counter-affidavits filed by the other respondents including the Government that the land in the Range-A is the personal property of Sivanthi Adityan and the same had been given voluntarily for the exclusive use of the Chennai Rifle Club.

49. According to the respondent Sivanthi Adityan, he never made any misstatement and this contempt petition has been filed making unwarranted allegations in order to harass him,even though he is an upstanding son of this State and former Sheriff of Madras.

50. Though it is stated in the contempt petition by the petitioner that earlier promises given by the respondent to the petitioner while withdrawing W.A.No.794 of 2002 and W.P.No.20425 of 1999 were not kept up and as such, contempt has been committed, this submission would not deserve any consideration for the reason that ultimately, this Court on the request of the

petitioner set aside the order permitting withdrawal and ordered for restoration of W.A.No.794 of 2002 and W.P. No.20425 of 1999. Therefore, those things cannot be complained in the present contempt petition.

51. The main attack made by the counsel for the respondent in the contempt petition is that the contempt petition is liable to be dismissed in limine as the written consent of the Advocate General which is mandatory has not been obtained. The need for consent of the Advocate General is to ensure that vexatious or vindictive petitions are not presented out of personal vendetta as the Advocate General would act as a filter against abuse of the jurisdiction.

52. Further, it has been brought to the notice of this Court that the petitioner himself is guilty of criminal contempt since he has published and circulated a pamphlet called FLAWS soon after the orders pronounced by the First Bench and the Second Bench in which publication of several references are made criticising the Chief Justice as well as the Judges of the other Division Benches and those references are in gross contempt of court for which suo motu action should be initiated by this Court.

53. In regard to the first argument relating to the consent of the Advocate General, we do not propose to give any importance to the same as this Court would be very well called upon to decide the contempt issue, since we have taken cognizance of the alleged contemptuous act committed by the respondent.

54. As stated earlier, we do not find any material to show that the respondent Mr.Sivanthi Adityan has made any misstatement before this Court so as to mislead this Court to pass any order in his favour. On the other hand, it has to be stated that his stand is consistent.

55. But, the shocking feature is that the respondent would require this Court to take cognizance of the contempt committed by the petitioner, who filed contempt petition, for having circulated a pamphlet called FLAWS criticising the First Bench as well as the Second Bench with regard to their functioning, while passing judicial orders in his petitions.

56. The counsel for the respondent would also produce in the typed set the copy of the FLAWS, a news letter, printed, published and circulated by Karuppan, the party-in-person. As a matter of fact, it is the contention of the counsel that the pamphlet was served personally on the counsel Mr.P.S.Raman by the petitioner.

57. Originally, we thought of ignoring this. Since Mr.P.S.Raman pointed out the portions published in the Flaws, circulated by Karuppan criticising the Hon'ble Chief Justice and other Judges of this Court, we decided to initiate proceedings against Karuppan. Mr.P.S.Raman, the counsel would also point out that in the very same Flaws, Karuppan has criticised him by making averments wounding his feelings. Therefore, we directed Mr.P.S.Raman to file his affidavit. Accordingly, he filed the same. In pursuance of the said affidavit, we thought it fit to issue suo moto notice to

Karuppan. Since we decided to initiate suo motu proceedings against Karuppan, we had an enquiry in the chamber as in-camera proceedings.
58. On going through the wordings in the Flaws, it is clear that they would certainly be construed to be contumacious, since there is a sarcastic criticism against the Judges of this Court including the Hon'ble Chief Justice of this Court. At the time of issuing notice, we have suitably advised Karuppan by asking him to realise his mistake in printing and publishing the remarks against the Judges of this Court in which he is practising and then file an affidavit.

59. We have sufficiently indicated our mind that Karuppan, the petitioner herein should not have resorted to such activities. However, we wanted to give opportunity to him to realise his mistake and asked him to file a suitable affidavit so as to enable this Court to drop the proceedings against him. Then, the matter was adjourned by giving sufficient time. But to our shock, the affidavit has been filed by the petitioner giving statement justifying his act and stated that it would not amount to contempt and even if it is a contempt, that must be heard only by the First Bench and not by this Bench.
60. Though in the first paragraph, Karuppan would state that "at the outset I profoundly apologize for my conduct having offended the sentiments of the Hon'ble Court though prima facie", he went on saying that "I went through the publication and found that nothing was contumacious. The idea of publishing the same is not with any ulterior motive except for making known to the multitude of curious advocates." In the continuing portions covering about 10 paragraphs, he went on justifying his act in making the others to know about the proceedings held in the court. Thus, it is clear that he has not realised the blunder mistake committed by him. On the other hand, he would venture to justify the same.

61. Yet another shocking feature is that when the petitioner argued the matter before the Second Bench consisting of Justice V.S. Sirpurkar and Justice F.M.Ibrahim Kalifullah, he criticised the order of the Supreme Court in S.L.P.Nos.1072-1073 of 2000 and the above Division Bench condemned the said act of Karuppan, the petitioner, and consequently, while dismissing the miscellaneous applications, imposed costs of Rs.2,000/- by the order dated 4.2.2003. To set aside the said order, another application has been filed by him before the same Division Bench and the same was dismissed on 10.2.2003 holding that the petitioner has filed the said petition which has vexatious nature. Challenging the said order, Mr.Karuppan filed S.L.P.Nos.4501-4502 of 2003 before the Apex Court and the same were dismissed on 6.3.2003. In that order, the following direction was given:
"We, therefore, see no ground to entertain the S.L.P. However, we would like to observe that the High Court may dispose of the writ appeal expeditiously along with the connected matter, if any."
By this, the order of the Second Bench has been confirmed by the Supreme Court.

62. After pronouncement of the above order, Mr.Karuppan requested the Supreme Court pleading for deletion of the direction to pay exemplary costs of Rs.2,000/- as he never meant to pass any disparaging comments against any

court. But, the Supreme Court declined for deletion and observed in the order that it is open to the petitioner to file appropriate petition in the High Court seeking deletion of the said direction, if he so chooses.

63. This order was passed on 6.3.2003. When Mr.Karuppan was asked by this Court whether he had either filed an application before the concerned Bench for deletion of direction to pay costs or made payment of costs, he said that he neither paid costs nor filed any such application. The costs was ordered to be paid by the Second Bench of this Court by the order dated 4.2.2003. The same was confirmed by the Apex Court on 6.3.2003. But, till date, there is no move on the part of the petitioner either to file an application for deletion of the direction to pay costs in the same Bench or to make payment of costs. Thus, it is clear that he is not inclined to comply with either of the directions given by this Court as well as the Supreme Court.

64. In this context, we have to see the nature of the act committed by the petitioner in having printed and distributed the pamphlet containing criticism of Judges.

65. As stated earlier, as we directed Mr.P.S.Raman who is appearing for Mr.Sivanthi Aditan, the second respondent in the contempt petition, he filed an affidavit on 4.9.2003 for the limited purpose of stating that the averment the petitioner Karuppan published one news letter named "Flaws" Volume IX Edition 2003 is true to his personal knowledge. The following is the relevant paragraphs:

"I respectfully state that a printed copy of the said publication was being distributed by Thiru R.Kaaruppan openly in the Madras High Court and one such copy was personally handed over to me by Thiru R. Kaaruppan in the corridor of the High Court outside the court hall of Hon'ble The Chief Justice. This happened a few weeks after the judgment of the Division Bench of this Hon'ble Court dated 04.02.2003 in W. P.M.P.No.3534 of 2003 and W.A.M.P.No.543 of 2003 in W.P.No.20425 of 19 99 and W.A.No.794 of 2002. My office colleague Thiru C.Seethapathy, Advocate was also personally present when this incident had happened.

I further respectfully submit that the aforesaid publication contained several references to me personally and also critical of the manner of my conducting the various cases which he has filed several of which criticisms were aimed at demeaning my character and professional integrity as well as my competence."

66. While filing this affidavit, Mr.P.S.Raman, the counsel requested this Court to go through the said publication of news letter called "Flaws" and also to take note of the context in which the said publication of pamphlet was made criticising the Judges including the Chief Justice and himself. As mentioned in his affidavit, this distribution of pamphlet by Mr.Karuppan in the corridor of the High Court outside the court hall of Hon'ble The Chief Justice happened a few weeks after the judgment of the Division Bench consisting of Justice V.S. Sirpurkar and Justice F.M.Ibrahim Kalifullah, dated 4.2.2003.

67. Before going into the publication, namely FLAWS, it would be better to refer to the observation made by the Division Bench of this Court about the conduct of the petitioner Karuppan in the order dated 4 .2.2003. The relevant observation is this:

"Though Mr.R.Karuppan mentioned in para 12 of his Affidavit filed in support of W.P.No.3253 of 2000 as against which the Writ Appeal in W.A.No.794 of 2002 has been filed by stating that dismissal of the S. L.P. and the observations made therein are against the Constitution provisions and void abinitio, while taking strong exception to usage of such expressions, we are of the firm view that there is no warrant for him to charecterise the order as such and in any event, the said order squarely covers the present proceedings in all fours. Not satisfied with such unwarranted comments made in the Affidavit sworn to by him on 18-2-2000, he also attempted to reiterate such a stand before us. Taking strong exception to that he was directed not to make any such attempt before us. ..... we are of the view for having made irresponsible and unwarranted comments about the order of the Hon'ble Supreme Court dated 21-1-2000 in S.L.P.(Civil) Nos.1072 to 1073 of 2000 , the petitioner has exposed himself for taking appropriate action against him. But since we have decided to dismiss the petitioner's miscellaneous petitions, we refrain from taking any such action except to award exemplary costs while dismissing these miscellaneous petitions. ..... In the result, the present miscellaneous petitions .... are dismissed both on the ground that they are not maintainable as well as devoid of merits with costs of Rs.2000."

Thus, it is clear that his conduct criticising the Supreme Court's order was already condemned by the Second Division Bench.

68. The above order dated 4.2.2003 was sought to be set aside by filing another application in W.A.M.P.No.715 of 2003 in W.A.No.794 of 20 02 before the very same Bench stating that one of the Presiding Judge of the Bench had given an impression that he was partial towards other party. While dealing with the said ground, the Second Bench would hold as follows:

"In this petition, the petitioner seeks to set aside our above said order dated 4.2.2003 and also direct listing of the case before some other Bench. while seeking for the above prayer, the petitioner would contend that though he argued the above said applications before us, he had its own reservations about one of the Presiding Judge of the Bench as according to him, he gained an impression that "justice may not be seemingly done. .... At the outset, we brand this petition as a vexatious one, inasmuch as, we are of the firm view that though by couching the prayer in an innocuous manner in this miscellaneous petition, the petitioner really wants to review our order dated 4.2.200 3 without preferring appropriate petition for that purpose

complying with the requirement of law in regard to the filing of a review application. .... As regards his contention regarding "justice having not been done seemingly", the whole affair is unfortunate."

69. Giving the details as to how several opportunities were given to argue the matter on the earlier occasions, the Second Division Bench ultimately dismissed the application. Only thereafter, the petitioner filed S.L.P.Nos.4501 and 4502 of 2003 before the Supreme Court and the same also

were dismissed on 6.3.2003 declining to entertain his claim and also refusing to delete the direction in regard to the payment of exemplary costs of Rs.2,000/-. As already indicated, till now the payment has not been made nor any application has been filed before the Court concerned for deletion by utilising the opportunity given by the Supreme Court.

70. On the other hand, the petitioner filed another writ petition in W.P.No.8121 of 2003 seeking interim orders before the First Bench. The First Bench headed by the Hon'ble The Chief Justice, while holding that the writ petition is not maintainable in view of the Apex Court order dated 21.1.2003, would admit the petition for a limited purpose to verify that the third respondent, namely the Sports Authority of India has got any role in the affairs of the first respondent, namely National Rifle Association of India. However, the interim relief sought for in the miscellaneous applications was refused to be granted.

71. Thus, Mr.Karuppan was not successful before the First Bench as well as before the Second Bench in getting any orders in his favour. On the other hand, he invited the orders from both the Benches giving finding about misconduct and also the maintainability of the writ petition. This must have irked Mr.Karuppan. In that context, the publication, namely FLAWS came to be made. The FLAWS copy in Tamil has been given in the typed set. The English translation also has been filed.

72. Let us quote some of the recitals contained in the said Flaws criticising both our Hon'ble Chief Justice and Justice V.S. Sirpurkar who headed the Second Bench:

"A writ appeal was filed opposing this (Justice Jagadeesan's order).
The Chief Justice took it up for hearing.
Karuppan sought that two petitions seeking to allow him to participate in the competition that is held before the Indian team is selected and to permit him to practice at the Chennai Rifle Club be taken up for hearing. The Chief Justice could have taken it up for hearing and granted an interim order. But it is not clear why he posted them before Justice Sirpurkar. .....
However, he filed the counter only on behalf of Sivanthi Adithan. In that counter too all the charges made by Karuppan were not denied. The usual practice is that in cases relating to competitions and examination the verdict would be delivered immediately. That is how judgments were given since 1994. However, Justice Sirpurkar casually heard the case and without passing any orders posted it for further hearing the next day. The next day the part heard case was listed last on his call list.
Karuppan who waited till afternoon lost his patience and wrote a letter to the Chief Justice asking him to transfer the case to some other judge, as he did not have confidence in Justice Sirpurkar. .... But the Chief Justice sent the note to Justice Sirpurkar asking him to expedite the hearing in the petitions. Since the petitioner was an advocate and doubted the judgmental capacity of the judge, though the suspicion could be baseless, Justice Sirpurkar should have transferred the case to some other judge. ....
However, it was proved that Justice Sirpurkar was biased while attempting to cover up the matter relating to the selection of Sivanthi Adithan's son. .... After thinking the whole night, Karuppan came to a

decision. He remembered that Justice Sirpurkar had not delivered the verdict in a cheating case against Sivanthi Adithan in 1999 though it was proved that the latter was guilty. The same judge was now saying that the advocate appearing for Sivanthi Adithan need not argue about Sivanthi Adithan's son. Therefore, he (Karuppan) should not argue his case further before Justice

Sirpurkar. ... Justice Sirpurkar's present judgment was contraditory to his verdict in 1998. Since he had not accepted the verdicts delivered by three benches, he should refer it to a larger bench."

73. So, these portions would indicate that Mr.Karuppan in the news letter called FLAWS has criticised the act of the Hon'ble The Chief Justice in having declined to grant interim order in the two petitions in the appeal filed against Justice Jagadeesan's order and the conduct of the Chief Justice in posting them before Justice Sirpurkar. Further, almost in all the paragraphs in the news letter, he criticised Justice Sirpurkar stating that he is biased and he doubted the judgmental capacity of Justice Sirpurkar and also he did not have any confidence in Justice Sirpurkar. He would also go to the extent of saying that Justice Sirpurkar in the year 1999 had given a verdict in a cheating case in favour of Sivanthi Adithan, though it was proved that the latter was guilty.

74. As a matter of fact, a perusal of the other orders passed by the Hon'ble The Chief Justice and the Second Bench would reveal that several interim reliefs were given by them earlier in favour of the petitioner Karuppan. On one occasion, though the writ appeal and other application have been withdrawn on the assurance given by the respondent for giving concession to participate in the National Tournaments and after enjoying the concession, the petitioner requested the First Bench to set aside the order permitting him for withdrawal and to restore the main petition. In fact, only at the intervention of the Hon'ble chief Justice, the respondents have conceded to give all concessions and on that basis, the petition was allowed to be withdrawn.

75. There is no dispute in the fact that in pursuance of the interim orders, the petitioner was allowed to participate in some of the tournaments. Even though the concessions given by the respondents on the basis of the compromise entered between the parties, at the benign suggestion made by the Hon'ble Chief Justice have been enjoyed, the Hon'ble Chief Justice without any hesitation allowed the request by restoring the original petition mainly on the ground that the petitioner should not have the feeling that he was not heard fully for the main relief. Similarly, the Second Bench headed by Justice Sirpurkar also earlier granted similar reliefs to the petitioner for participating in the National Tournaments.

76. Despite, this, Mr.Karuppan merely because subsequent applications were not allowed by the First Bench and the Second Bench, made a criticism against the Hon'be Chief Justice heading the First Bench and Justice Sirpurkar heading the Second Bench.

77. Furthermore, he has also made a scathing criticism against the counsel Mr.P.S.Raman, which is as follows:
"Bharat (counsel), who is the son of late V.P.Raman, enjoys the dubious distinction of being the only lawyer in the High Court who would make representations contrary to truth and law without having regard for judges. Since he does not know law, he has no inhibitions in uttering whatever he wants."
This statement also, in our view, is unfortunate as he is emboldened to make any unparliamentary remarks as against the Judges as well as against the counsel appearing for the other side.

78. When this Court went through the earlier orders passed in favour of the petitioner, it is noticed that both the Hon'ble Chief Justice and Justice Sirpurkar gave the interim reliefs, despite the strong objection raised by the counsel for the respondents, in order to give opportunity to the petitioner who happens to be an advocate to show his talent in the National Tournaments. It is also to be taken note of that Mr.Karuppan is not only a practising advocate, but also was holding a very high position as the President of the Madras High Court Advocates' Association which consists of

several thousands of bar members. Without realising the responsibility, the petitioner thus had indulged in making disparaging remarks about the conduct of the Judges and the lawyers.

79. When this Court issued suo motu proceedings against the petitioner with reference to the publication of FLAWS, as indicated earlier, this Court advised Mr.Karuppan to realise his mistake and file an affidavit suitably, so that this Court would consider the above act of the petitioner with a lenient veiw.

80. Despite the indication given by this Court, Mr.Karuppan filed the affidavit dated 7.11.2003 justifying his action of distributing the pamphlet criticising the Judges and the lawyers. The relevant statements in the affidavit are as follows:
"I went through the publication and found that nothing was contumacious. The idea of publishing the same is not with any ulterior motive except for making known to the multitude of curious advocates. .... lst respondent and his counsel have overlooked that the alleged act of contempt is not on the face of this Court. So they can only file a contempt application before the first C ourt, for the Chief Justice's Court alone is vested with the portfolio of exercising contempt jurisdiction. ...If the respondent is aggrieved personally and if his counsel is also aggrieved, the only course is that each one of them should have filed separate contempt applications for action against me the applicant. .... I had been publishing a news letter called Flaws for the past one and half decades are so. It invariably brought out the happenings in the Court. It's sole objective was to enlighten the advocates fraternity about the happenings in and around the Campus. ..... Above all the issue involved is matter of public interest and pertains to a pro-bono action. .... Besides many who followed the case were of the opinion

that the matter should be reported to the Chief Justice of India and his companion Judges as well to the President of India. They felt that the matter should be published on their behalf. I accordingly expressed the entire happenings from the day one to till the last orders of the Chief Justice including the happenings at the Supreme Court. ..... Faithful honest expositions of the happenings in the Court of law are public proceedings can be published and as well pleaded before any superior court is the settled legal position which is every body's knowledge. That cannot give rise to a criminal contempt. ..... lst respondent has stated that I have made scandalous allegations against the Chief Justice and his companion Judge. I am afraid that there is nothing scandalous to be found. .... Needless to state that this is not the forum even if the allegations were true and that the same should have been moved before the Hon'ble Chief Justice."

81. Even when the matter was taken up in the chamber during the incamera enquiry, Mr.Karuppan, the party-in-person would reiterate that the statement made in the publication is not contumacious and the idea of publishing the same is only for making known to the multitude of advocates and the bona fide reporting of the experiences of the advocate inside the court to the members of the fraternity, that too as a leader of the Bar, can never be termed as a contempt and even assuming that the same is contempt, that could be questioned only by a separate proceeding and that too before the First Bench headed by the Hon'ble Chief Justice and not before this Court.

82. This contention apparently, in our view, is untenable in view of the suo motu power which has been conferred to this Court under Section 15 of the Act. Further, all these matters were originally posted before the First Bench and on the basis of the administrative orders, it was posted before the Second Bench and later, on the order of the Hon'ble Chief Justice, the matter has been posted before this Court. Therefore, we are of the view that this Court is within its power to initiate suo motu proceedings against the party-in-person who has admittedly printed and published by serving the copies of the news letter to the advocates including the counsel for the respondent, that to, near the court hall of the Chief Justice.

83. The submission that the enquiry can be conducted only by the concerned Judge with reference to the contempt lacks substance as the contempt of court jurisdiction is not to protect an individual Judge, but it is to protect the administration of justice from being maligned.

84. The offence of criminal contempt is divided into two categories. One is publication of any matter which scandalises or tends to scandalise the authority of any court etc. etc. Second is the doing of any act whatsoever, which scandalises or tends to scandalise the authority of any court.

85. The present case would fall under the first category. There is no dispute that the publication and distribution of news letter was made by Mr.Karuppan in the High Court Campus by serving the same to the advocates. As we have indicated that the contents of the publication would scandalise both

the First Bench and the Second Bench. The petitioner cannot escape by saying that it is only a bona fide report.

86. The expression "bona fide" or "good faith" in criminal jurisprudence has a definite connotation. Its import is totally different from saying that the person concerned has honestly believed the truth of what is said. Before a person proposes to make an imputation on another the author must first make an enquiry into the factum of the imputation which he proposes to make. If he does not do so, he cannot claim that what he did was bona fide i.e. done in good faith.

87. Section 2 (c) of the Contempt of Courts Act contains the definition of "criminal contempt" which reads thus:
"2(c) 'Criminal contempt' means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which--
(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or
(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner."
The gist of the section is that if any person makes a publication containing the statement which scandalises or tends to scandalise or lowers the authority of any court, it would amount to contempt.

88. If the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such court, it can be punished summarily as contempt. One is a wrong done to the Judge personally and the other is a wrong done to the public. It would be an injury to the public if it tends to create an apprehension in the minds of the public regarding the integrity, ability or fairness of the Judge. It is well established that it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice by reason of such defamatory statement. It is enough if it is likely to interfere with the proper administration of law.

89. The definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of court. The court has the duty of protecting the interest of the community in the due administration of justice and so, it is entrusted with the power to commit for contempt of court, not to protect the dignity of the court against insult, but to protect the right of the public so that the administration of justice is not perverted or interfered with.

90. The defamatory publication concerning the Judge as a Judge brings the court into contempt. Any caricature of a judge calculated to lower the dignity of the court would destroy, undermine the public confidence in the administration of justice or the majesty of justice.

91. In order that the Judges may fearlessly and independently act in the discharge of their judicial functions, it is necessary that they should have full liberty to act within the sphere of their activity.

92. A fair criticism of the conduct of a Judge, the institution of the judiciary and its functioning may not amount to contempt if made in good faith and public interest. To ascertain the good faith and the public interest, the courts have to see all the surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved. All citizens cannot be permitted to comment upon the conduct of the courts in the name of fair criticism. If the same is not checked, it would destroy the institution itself. Litigant losing in the court is the first to impute motives to the Judges.

93. Judicial function cannot and should not be permitted to be stonewalled by browbeating or bullying methodology.

94. In the instant case, the petitioner himself is an advocate practicing for about 25 years. He has got a special knowledge of law and the functioning of the institution of judiciary. He was also the President of the Madras High Court Advocates' Association for some years. Therefore, he is expected to know the nature of his act as well as the consequences of the same.

95. As indicated earlier, the petitioner even before the Second Bench headed by Justice Sirpurkar, went on criticising the Supreme Court's order by stating that the order of the Supreme Court dated 21.1.200 0 was against the spirit of the Constitution. Such a criticism was not allowed and ultimately, the Second Bench imposed costs of Rs.2000/- finding that his conduct of criticising the order of the Supreme Court was most reprehensible.

96. In the further writ petition filed by the petitioner which came up before the First Bench head by the Hon'ble Chief Justice, he insisted that the interim orders to be passed without any delay. When the First Bench wanted to give time to the other side to file their counter to enable the Court to have a full picture of the case, he asked the First Bench to grant the interim relief immediately. In pursuance of the persistence shown by the petitioner, the First Bench heard the petitioner and other counsel and declined to grant the interim relief.

97. These grievances felt by the petitioner at the hands of the Second Bench and the First Bench had made the petitioner to publish the news letter called FLAWS and distributed to the lawyers. As noted above, there is a clear-cut criticism against the Hon'ble Chief Justice for having not granted the interim relief and also posted the matter before the Second Bench. Similarly, he made a statement with disparaging remarks against Justice Sirpurkar heading the Second Bench that he was biased and his judgment against him was the product out of his partiality towards Mr.Sivanthi Adityan.

98. In this context, we are to note that both the Hon'ble Chief

Justice and Hon'ble Justice Sirpurkar have earlier given some orders in favour of the petitioner. When the unfavourable orders obtained by him from the said two Benches which passed those orders after hearing the counsel for parties at length, Mr.Karuppan had hastened to indulge in the process of mudslinging against the Judges concerned even without realising that he was helped and encouraged by the First Bench and Second Bench by providing opportunity to him to participate in the National Tournaments.

99. Further, our Hon'ble The chief Justice who is able and admirable and who commands respects from one and all in Tamil Nadu, unfortunately has been subjected to unsavoury criticism. Similarly, Justice V.S.Sirpurkar who is known for his nobility and uprightness has also become a target for scandalisation.

100. In this fact situation, we are at a loss to understand as to why Mr.Karuppan has to resort to these intimidating activities against the Judges, even though he has experience for about 25 years in practice and he happened to be the President of the Bar once. If this is not checked, then a situation may arise and by that, the counsel by their intimidating activities would try to obtain orders from the Judges, who may think that granting orders would be better rather than receiving scandalisation or scathing criticism. We cannot allow such a situation to be prevailed any more at any cost.

101. The calculated contemptuous remarks and the sweeping allegations against the Judges, which are derogatory in character not only would amount to casting aspersions in the conduct of Judges in the discharging of their judicial functions but also wounds the dignity of the Court.

102. It is highly painful to note that Mr.Karuppan who is none other than an Advocate practising in the highest Court of the State for long number of years and having been as the President of a great Advocates' Association, Madras, after having failed to obtain an order in his favour from the First Bench and Second Bench in his own cause has escalatingly scandalised both the Courts by by making allegations which are highly offensive, intimidatory and beyond condonable limit.

103. Even a cursory reading of the remarks in the FLAWS made against our Hon'ble Chief Justice as well as against Justice Sirpurkar of this Chartered High Court unambiguously shows that the outrageous allegations and potentially prejudicial utterances made by Mr.Karuppan have struck a blow on the judiciary and also seriously sullied the great image and high esteem which the office of the Judge of the High Court carries with it and thus impeded the course of justice. In our opinion, the incident in question is a flagrant onslaught on the independence of the judiciary, destructive of the orderly administration of justice and a challenge to the supremacy of Law.

104. It is true that taking action for contempt of Court against an Advocate, who happened to be the leader of the Bar, shall be regarded as an extreme measure. But, to protect the majesty of law, it becomes the duty of the Court, though painful, to start the cause of taking action for contempt

mainly for preserving its dignity. No one including an Advocate who himself is an officer of the Court can claim immunity from the operation of the law of contempt, if his conduct in relation to the Court interferes with or is calculated to obstruct the due course of justice.

105. When a member of the Bar is required to be punished for use of contemptuous language against the judiciary, it is highly painful and it pleases none but painful duties have to be perforemd to uphold the honour and dignity of an individual Judge and his office and the prestige of the institution.

106. In the light of the above principles laid down by the Supreme Court in S.K. SUNDARAM, IN RE (2001(2) S.C.C. 171), ARUNDHATI ROY, IN RE (2002(3) S.C.C.343), P.N. DUDA v. P. SHIV SHANKER (1998(3) S.C.C.167), MAHABIR PRASAD SINGH v. M/S. JACKS AVIATION PRIVATE LTD. ( A.I.R.1999 S.C.287), PRITAM PAL v. HIGH COURT OF MADHYA PRADESH ( 19 93 S.C.C.(Cri) 356) and M.B.SANGHI v. HIGH COURT OF PUNJAB (1991 S.C.C.(Cri) 897), we are constrained to punish Mr.Karuppan, the partyin-person, since we find him guilty for the offence under Section 2(c) of the Contempt of Courts Act. Accordingly, he is punished for the same.

107. Section 12 of the Act provides for punishment of simple imprisonment or fine or with both. We do not propose to send Mr.Karuppan to jail, though the act committed by him is serious which would entail punishment of imprisonment. The reason for the same is that Mr. Karuppan was holding once a very important position as the President of the Madras High Court Advocates' Association consisting of thousands and thousands of advocates. Similarly, we are not inclined to impose heavy fine.

108. Of course, this Court has got power to impose punishment of imprisonment for a period of six months or to pay a fine of Rs.2,000/- or with both. But, as popularly known, the Judiciary has got wide powers, but the greater the power, the greater the restraint.

109. The great Tamil saint Thiruvalluvar says:

@foJXr;rp bky;y vwpf beoJ Mf;fk;
eP';fhik ntz;L gth;.@

The translation is:

"The King, who desires his rule to prosper on a permanent basis, should make the gesture of severity when awarding punishment, but let the final blow fall lightly."

110. The Judge is one, who having equitably examined any injustice, suitably punishes it, so that it may not be again committed. The Court may be tough in posture , but it has to be merciful in operations. So, let the Courts brandish the rods smartly but lay it on soft. This is a way of imposing punishment as popularly called as "Mercy Seasoning Justice" as quoted by Shakesphere.

111. In the light of the above discussion, we are of the view that imposing the sentence of small fine would be fine, as it would be taken as a token for the expression of our displeasure over the conduct of Mr.Karuppan, the contemner. Therefore, while we find him guilty for the offence under Section 2(c) of the Act, we impose a simple fine of Re.1/- (One Rupee) to be paid within one month, in default to undergo one day simple imprisonment.

112. At this stage, it may be worthwhile to refer to our decision of giving suggestion to the Chennai Rifle Club to re-admit him. While considering this, we cannot forget the ratio decided by the Supreme Court in S.P. CHENGALVARAYA v. JAGANATH (1994(1) S.C.C.1) to the effect that the courts of law are meant for imparting justice between the parties and when the party comes to the court seeking for the relief, he must come with clean hands and when there is no bona fide in his conduct and when he has adopted intimidating tactics to obtain some orders, this Court would not help those party as it would amount to subverting the justice.

113. Even though we felt that in the light of the medals he obtained in 1992, 1997 and 2002, we are unable to give such suggestion as we are afraid that our suggestion may not be accepted by the Executive Committee of the Chennai Rifle Club in view of the past conduct of the petitioner. The past records of the petitioner would undoubtedly show that he has created enemies in all the quarters. He made a number of baseless allegations without any material against all the respondents in these writ petitions. Even among the Bar members, he has created a situation where some members of the Bar including the counsel for the respondents got aggrieved over the scurrilous allegations made in the affidavit filed before this Court as well as in his news letter distributed to him. To make the matter worse, he invited strong condemnation from the Judges of this Chartered High Court as well.

114. In this context, we recall an incident which happened in the life of Mr.Abraham Lincoln, who was the President of America. When he contested for the Presidenship of America, out of jealousy, a lot of enemies from several quarters worked against him in order to prevent him from becoming the President. At last, he was elected as the President. As soon as he became the President, he instructed his Private Secretary to inform all his so-called enemies, namely Dignitaries about his visit to their respective houses by fixing date and time. Accordingly, time was fixed. The President went to all the houses of the so-called 'enemies' and received their greetings. Then, he came back to the White House. Private Secretary with a polite tone with reluctance asked the President of America as to why he should have taken trouble of going to his enemies' houses to get their greetings and is it necessary for the President of America to go over to their places as it is very easy for the President being the powerful, the First Citizen of America to destroy his enemies by various means. Mr. Abraham Lincoln swiftly replied that he did only that. To explain, he destroyed all his enemies in a single day by going over to their houses and making them to greet him, thereby the ill-will and the enmity they bore against him were completely annihilated. Mr.Abraham Lincoln is not only a role model to Americans but also a classic example to every leader in this world.

115. Mr.Karuppan apparently has not followed this example. When he became the President of Advocates' Association, he must have followed the path of Mr.Abraham Lincoln, the former President of America by making all his enemies as his friends. On the contrary, he has maintained and created a lot of enemies which resulted in our inability to give our suggestion in favour of Mr.Karuppan to the respondents against whom disparaging remarks have been made without any material. Hence, we are constrained to refrain ourselves from making any such suggestion.

116. Mr.Karuppan claims himself to be the best shooter winning laurels in the Shooting Range. Refuting his claim, the counsel for the respondents would state that he is only a troublemaker in the Rifle Club. We do not want to go into this controversy. But, one thing is clear. We are not able to hold that he is a good suitor in the Courts of law.

117. To sum up:
(i) The writ petitions in W.P.No.20425 of 1999 and W.P.No.8121 of 20 03, writ appeal in W.A.No.794 of 2003 and Contempt Petition in Cont. P.No.368 of 2003 are dismissed. Consequently, all the connected miscellaneous petitions are also dismissed.
(ii) In the suo motu contempt proceedings, Mr.Karuppan is found guilty under Section 2(c) of the Contempt of Courts Act and sentenced to pay a fine of Re.1/- (One Rupee) to be paid within one month, in default to undergo one day simple imprisonment.

118. Before parting with this case, we record our full appreciation for the services rendered by Mr.N.R.Chandran, learned Advocate General for having taken pains in collecting judgments on the question of maintainability and produced before this Court.

(M.K.V.J.) (S.A.J.)
5-12-2003
Index: Yes
Internet:Yes
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W.P.No.20425 of 1999, W.P.No.8121 of 2003,
W.A.No.794 of 2002 and Cont.P.No.368 of 2003

M. KARPAGAVINAYAGAM, J.
and
S. ASHOK KUMAR, J.

(Order of the Court was made by M.KARPAGAVINAYAGAM, J.)
This Court passed orders in W.P.No.20425 of 1999, W.P.No.8121 of 20 03, W.A.No.794 of 2002 and Cont.P.No.368 of 2003 on 5.12.2003 dismissing all the petitions filed by Mr.Karuppan, the party-in-person and in the suo motu contempt proceedings taken against the said Karuppan, this Court found Karuppan guilty under Section 2(c) of the Contempt of Courts Act and sentenced to pay a fine of Rs.1/- (One rupee) to be paid within one month, in default to

undergo one day simple imprisonment.

2. Karuppan, the party-in-person presented a letter to the Hon'ble Chief Justice dated 15.12.2003 requesting the Chief Justice to post the matter before this Court (same Bench) so as to enable him to request this Court to recall the earlier order passed by this Bench on 5.1 2.2003 on the ground that this Court was biased towards Sivanthi Adityan and his son.

3. The Hon'ble Chief Justice issued administrative direction to the Registry on 17.12.2003 to post the said letter before this Bench which passed the final orders, as requested by Karuppan, for being mentioned on 19.12.2003. Accordingly, this Bench was again re-constituted and this matter was taken up on 19.12.2003 at 2.15 p.m.

4. Mr.Karuppan, the party-in-person argued at length from 2.30 p.m. to 4.30 p.m. reading out the said letter dated 15.12.2003. He also read out the affidavit dated 9.12.2003 filed by him which contains the prayer that this Court should recall the order earlier passed on 5 .12.2003 making allegations questioning the competency of this Court in dealing with the writ petitions and also making specific allegations against one of us (M.K.V.J) that he is biased as he participated in the function held on 29.10.1999 arranged by Sivanthi Adityan and as such, there had been a long-standing relationship between the Presiding Judge and Sivanthi Adityan and therefore, the final orders dated 5.12.2003 to be recalled and the matter to be referred to the Chief Justice to be posted for fresh hearing by some other Bench. In short, the prayer in the letter dated 15.12.2003 and the affidavit dated 9.1 2.2003 is to recall the final orders passed by this Bench as one of us (M.K.V.J.) never sat in the writ portfolio all these years and he was biased towards Sivanthi Adityan as he is a friend to the family of Sivanthi Adityan and as second of us (Justice Ashok Kumar) was just elevated months back and is yet to sit in the writ jurisdiction. As such, the complaint against this Bench is that one of us (M.K.V.J.) is incompetent to deal with the writ matters and biased towards Sivanthi Adityan family and another of us (S.A.J.) is also incompetent as he was just elevated some months back.

5. On this ground, Karuppan, the party-in-person, who has been practising for about 25 years and who happened to be the leader of the Bar for some time, seeks to recall the order dated 5.12.2003 passed by this Bench.

6. When this Court asked Mr.Karuppan as to whether this Court has got power to recall the final orders passed on 5.12.2003 on merits, Karuppan on the strength of the decision in SHIVDEO SINGH v. STATE OF PUNJAB (A.I.R.1963 S.C.1909) would state that this Court has got powers to do so. He has cited the authorities in A.M.MATHUR v. PRAMOD KUMAR GUPTA (1990(2) S.C.C.533), STATE OF RAJASTHAN v. PRAKASH CHAND (JT 1997(9) S.C.492), IN RE PINOCHET (2000(I) C.T.C.580 and V.K.MAJOTRA v. UNION OF INDIA (2003(8) S.C.C.40).

7. A.I.R.1963 S.C.1909 would deal with the position regarding the power of review under Article 226. The Supreme Court would observe in this decision thus:
"There is nothing in Art. 226 of the Constitution to preclude a High

Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it."
Thus, it is clear that the Supreme Court would refer to the powers of this Court under Article 226 to review the matter to prevent miscarriage of justice or to correct grave and palpable errors committed by it. It does not refer to the powers of recalling the final orders on the ground that the said order was biased.

8. 1990(2) S.C.C.533 would deal with the judicial restraint and discipline to be maintained by the High Court Judge. The Supreme Court would find fault with a High Court Judge for having made disparaging remarks against the Advocate General while allowing the writ petition.

9. JT 1997(9) S.C.492 would refer to the power of the Chief Justice who is vested with the administrative control of the High Court while on judicial side. The Apex Court would further observe that the Chief Justice is the master of Roster and has prerogative to constitute benches and to allocate work. This observation was made by the Supreme Court while dealing with a case where the show cause notice for contempt was issued by a single Judge of the High Court to the Chief Justice.

10. In the judgment in 2000(1) C.T.C.580, the House of Lords would observe that no man should be a Judge of his own cause and if a Judge is a party to the litigation or has financial or proprietary interest in outcome of such litigation, he is literally sitting as Judge of his own cause and is automatically disqualified to decide such cases.

11. In 2003(8) S.C.C.40, the Supreme Court would deal with the powers of the Judges sitting in the Writ courts directing them to decide the petitions on the points raised and if in a rare case, keeping in view the facts and circumstances of the case, any additional points are to be raised, then the concerned and parties likely to be affected should be put to notice on the additional points to satisfy the principles of natural justice.

12. The reading of all these decisions would indicate that neither the House of Lords judgment nor the Supreme Court judgments would deal with the powers to recall its own final orders passed on merits on the mere ground that one of the Judges of this Bench participated in a function in which one of the parties in the petition shared dais.

13. It is now pointed out that the petitioner subsequent to the final orders passed on 5.12.2003 filed an affidavit before this Court on 9.12.2003 requesting the Hon'ble Chief Justice to post the matter before this Bench to recall the orders. The Hon'ble Chief Justice posted the same before the other Bench, viz., P.D.D.J. and F.M.I.K.J.

14. The matter came up on 15.12.2003. R.Karuppan before the said Bench requested time to argue the matter in the next hearing. He also requested the P.D.D.J. Bench to de list the matter from that Bench and post the same before this Bench consisting of M.Karpagavinayagam, J. and S. Ashok

Kumar,J. However, in view of the administrative orders of the Hon'ble Chief Justice, the other Bench (P.D.D.J. and F.M.I.K.J.) rejected the said request and however, on the reason that he must be given opportunity of furnishing with the grounds of objection raised by the Office as to the maintainability, the said Bench adjourned the matter to 16.12.2003 at 2.15 p.m. Accordingly, the matter came up on 16.12.2003. Before the said Bench, another affidavit dated 16 .12.2003 has been filed stating that the judgment of Justice M. Karpaga Vinayagam and Justice Ashok Kumar was sought to be recalled only on the ground of doctrine of bias on the ground that it was found that contesting respondent Sivanthi Adityan and his son were close friends of His Lordship M.Karpaga Vinayagam, J. and that while the doctrine of bias was attributed before the other Bench consisting of Justice Sirpurkar and Justice Ibrahim Kalifullah, the same was not considered and therefore, Justice Ibrahim Kalifullah must recuse from hearing the matter. He would also cite A.I.R.1996 S.C. 513. Before the said Bench, he further made allegation against P.D.Dinakaran, J. also stating that he along with another Judge had earlier sentenced Karuppan to undergo two days imprisonment and as such, he must also be recused from the hearing.

15. Refusing to recuse themselves from hearing the matter, the said Bench consisting of P.D.Dinakaran, J and F.M.Ibrahim Kalifullah, J., considering the arguments of Mr.Karuppan and also the judgment A.I. R.1996 S.C.513 cited by him, found that the matter posted before them, namely the affidavit bearing W.P.S.R.No.151726 of 2003 to recall the order dated 5.12.2003 need not be posted before the same Bench consisting of M.Karpagavinayagam, J. and S.Ashok Kumar, J. and also of the considered opinion that the motive attributed against the Presiding Officer (M.Karpagavinayagam, J.) in the affidavit filed by the petitioner seeking to recall the order dated 5.12.2003 made in W.P.Nos.204 25 of 1999 and 8121 of 2003, W.A.No.794 of 2002 and Cont.P.No.368 of 2003, is not supported with any formal application, and even otherwise the same is liable to be rejected as an after thought and belated one. This order was passed on 16.12.2003.

16. However, it is mentioned in the said order dated 16.12.2003 that "we are of the considered opinion that the matter posted before us, viz. the affdiavit bearing W.P.S.R.No.151726 of 2003 to recall the order dated 5.12.2003 made in W.P.Nos.20425 of 1999 and 8121 of 2003, W.A.No.794 of 2002 and Cont.P.No.368 of 2003, need not necessarily be heard by the same Bench consisting of M.Karpagavinayagam, J. and S. Ashok Kumar, J. unless it is otherwise directed by the Hon'ble Chief Justice. Though the said Bench found that the matter need not be heard by the same Bench, it does not put a hurdle to the Hon'ble Chief Justice from directing the Registry to put the matter before the same Bench.

17. When the letter dated 15.12.2003 was placed before the Hon'ble Chief Justice on 17.12.2003, the Hon'ble Chief Justice, probably to give further opportunity to Karuppan to make submission on the same prayer, directed the Office to post before the same Bench consisting of M.K.V.J. and S.A.K.J. for being mentioned on 19.12.2003 to enable the petitioner to make submission in regard to the prayer for recalling the final orders. Accordingly, the matter was taken up by this Court on 19.12.2003 at 2.15 p.m.

18. We have gone through the letter dated 15.12.2003 which has been placed before this Court on the orders of the Hon'ble Chief Justice for being mentioned.

19. As indicated above, Karuppan would submit that the judgment of this Court dated 5.12.2003 was hit by the doctrine of bias, since one of us sat in judgment in an issue where his family friend has involved and that the judgment was a nullity and therefore, the said orders to be recalled and the matter to be referred to the Chief Justice to be posted for fresh hearing. He had also read over the letter dated 15.12.2003 and also the affidavit dated 9.12.2003.

20. He would contend that when there is a power for the Judges during the pendency of enquiry to recuse themselves from the Bench hearing the matter, the same power would be available even after passing of the final orders to recuse themselves from the Bench by recalling the order passed by this Bench and to refer the matter to the Hon'ble Chief Justice for fresh hearing.

21. He would cite the judgment reported in A.I.R.1996 S.C.513 ( supra). The relevant portion of the said judgment is as follows:
"If there be a basis which cannot be treated as unreasonable for a litigant to expect that his matter should not be heard by a particular Judge and there is no compelling necessity, such as the absence of an alternative, it is appropriate that the learned Judge should recuse himself from the Bench hearing that matter. This step is required to be taken by the learned Judge not because he is likely to be influenced in any manner in doing justice to the cause, but because his hearing the matter is likely to give rise to a reasonable apprehension in the mind of the litigant that the mind of the learned Judge, may be subconsciously, has been influenced by some extraneous factor in making the decision, particularly if it happens to be in favour of the opposite party. ..... This is necessary not only for doing justice but also for ensuring that justice is seen to be done."

22. The very same judgment has been cited before the other Bench consisting of P.D.Dinakaran, J. and F.M.Ibrahim Kalifullah, J. The said Division Bench by the order dated 16.12.2003 rejected his contention and refused to recall the order passed by this Court as the observation of the Supreme Court would not apply to the present case, as they are unable to appreciate under what context and to what extent the ratio laid down by the Apex Court cited supra is violated.

23. The reading of the Apex Court judgment would clearly show that when there is an apprehension expressed by the party concerned that there is a basis which cannot be treated as unreasonable for a litigant to expect that his matter should not be heard by a particular Judge, then it would be appropriate that the learned Judge should recuse himself from the Bench hearing that matter.

24. This fact situation is not available in this case. As a matter of fact, these matters came up before the First Bench. The Supreme Court dismissed S.L.P.Nos.4501 and 4502 of 2003 filed by the petitioner, by the order dated 6.3.2003 with an observation that the High Court may dispose of the writ appeal expeditiously along with the connected matter, if any.

25. In pursuance of the said direction, the Hon'ble Chief Justice posted the matter before the Third Division Bench. Thereafter, the Third Division Bench decided not to hear the matter and placed before the Chief Justice for posting it before some other Bench, as sufficient time was not available for them to hear. Then, the matter was posted before the Seventh Bench. There, Karuppan, the petitioner felt that the Seventh Bench proceeded to predetermine even at the outset, he sought the posting of the matter before some other Bench. In pursuance of his request, the Hon'ble Chief Justice posted it before the Eighth Bench consisting of Justice M.Karpagavinayagam and Justice S. Ashok Kumar.

26. Since he felt that sufficient opportunity was not given by the other Bench this Bench comprising of M.Karpagavinayagam, J and S. Ashok Kumar, J. heard the matter by posting the matter on several dates. Mr.Karuppan was fully heard. In the same way, the counsel for the respondents also were allowed to argue the matter in their own way at length.

27. The matter was taken up on 4.8.2003 and has been heard on several dates and ultimately, when this Court wanted to take suo motu proceedings regarding the contempt against Karuppan with reference to FLAWS, a news item published by him criticising the Chief Justice and another Judge of this Court, the matter was posted on .. and in-camera enquiry was conducted in the Chamber itself, so that the Court can have free discussion with the party concerned.

28. As mentioned in the order dated 5.12.2003, this Bench indicated to Mr.Karuppan, while issuing show cause notice in the suo motu contempt, its mind that the allegations contained in 'FLAWS' against the Judges of this Court are contumacious. This Bench further advised the petitioner to file a suitable affidavit tendering unconditional apology so that the suo motu proceedings could be dropped. Even then, Karuppan, the party-in-person filed counter-affidavit justifying his act. This matter also was heard on several times and the in-camera enquiry was conducted in the Chamber itself. Ultimately, on 5.12.2003, this Court passed an order dismissing the writ petitions, writ appeal and contempt petition filed by him and in the suo motu proceedings, he was convicted for the offence under Section 2(c) of the Contempt of Courts Act and he was fined to pay one rupee.

29. On 9.12.2003, he filed an affidavit to recall the final order making allegations against this Bench as it is biased towards Sivanthi Adityan. As indicated above, his prayer was rejected by the other Bench by the order dated 16.12.2003. However, the Hon'ble Chief Justice by the order dated 17.12.2003 directed the Registry to post the letter dated 15.12.2003 before this Court for being mentioned to hear him with reference to the prayer of recalling the orders dated 5.12.2003 on the ground of bias.

30. We have carefully heard the submissions of Mr.Karuppan and given our thoughtful considerations.

31. On such consideration, we are of the opinion that this prayer is liable to be rejected on three grounds which are as follows:
(1) None of the decisions cited by Karuppan would indicate that this Court has got powers to recall the final orders passed earlier on merits after full hearing merely on the ground of bias. After pronouncement of the final judgment on merits, this Court becomes functus officio. Thus, we are not competent to recall our own order and to give the relief sought for in the letter dated 15.12.2003 and the affidavit dated 9.12.2003.

(2) When we go through the records produced by the party in person to find out whether any basis regarding the apprehension of bias towards one of the parties, we find, there is nothing. The only material placed before this Court on 19.12.2003 is the copy of the Daily Thanthi dated 28.9.1999 wherein it is published that Justice Karpagavinayagam presented the award to the former Chief Justice M.M.Ismail for his contribution to the literature. The function was arranged by the orgaisation of Daily Thanthi and one of us (Justice M. Karpagavinayagam) participated and appreciated the service of the former Chief Justice M.M.Ismail for his service to the literary field and nothing more than that. Admittedly, this function was held on 27.9.1999 attended by the elite audience including the public. We are at a loss to understand as to how the participation of one of the Judges in the function arranged as literary function which was intended to give the award to the former Chief Justice in the name of C.P.Adhithanar Literary Award Function would give rise to the suspicion of the biased attitude against one of the Judges towards the son of the said C.P. Adhithanar. As indicated above, Karuppan would invariably use to seek for transfer of case from one Bench to another on one reason or other. When the matter was argued before the Bench consisting of V.S.Sirpurkar, J. and F.M.Ibrahim Kalifullah, J., he asked for transfer of the matter to another Bench and the same was refused. When he argued before the Bench headed by Justice N.V.Balasubramanian, the similar request was made and ultimately, the Hon'ble Chief Justice transferred the matter before this Bench. The matter went on before this Bench for several hearings for about two months. No complaint was made against this Bench. After final order was passed by this Bench, he filed an affidavit for recalling the order and the same was posted before P.D. Dinakaran, J. and F.M.Ibrahim Kalifullah, J. He also made allegations against both these Judges and consequently, requested the said Bench to recuse themselves and post it before another Bench. Thus, it is clear that Karuppan, the party-in-person, who has been practising for about 25 years as Advocate, bent upon for Bench-hunting by making all sorts of allegations against the Judges concerned. The detailed order passed by this Court on 5.12.2003 also would show that the moment he is not able to get favourable orders from the Bench concerned, he would resort to making allegations against the said Bench. The Judges who were the victims earlier are the First Bench and the Second Bench. Now, this Bench has become a target for his unwarranted allegations. The only difference is that we became target after the final order, whereas others

during the enquiry. Therefore , recalling cannot be done on the basis of bias which has been attributed against this Bench without any basis.

(3) As indicated above, the similar prayer has been made before the Bench consisting of P.D.Dinakaran, J. and F.M.Ibrahim Kalifullah, J. The above Bench rejected the said prayer on the following reason:

"We are of the considered opinion that the motive attributed against the Presiding Officer (M.Karpagavinayagam, J.) in the affidavit filed by the petitioner seeking to recall the order dated 5.12.2003 made in W.P.Nos.20425 of 1999 and 8121 of 2003, W.A.No.794 of 2002 and Cont.P.No.368 of 2003, is not supported with any formal application, and even otherwise the same is liable to be rejected as an after thought and belated one."

We are in entire agreement with the above finding. This Bench, as noted above, heard this matter on several dates. The publication was made in the Daily Thanthi, which is the largest circulated daily, wherein the former Chief Justice was given award by one of the Judges on 27.9.1999. It cannot be said that the said publication was not known to the petitioner. This matter was posted before this Bench in 2003. On 5.12.2003, the final order has been pa ssed. Till then, there was no complaint. On 8.12.2003, he filed W.P.No.36000 of 2003 seeking the similar relief in the writ petitions disposed of by this Court on 5.12.2003 and the same was rejected on 12.12.2003. When that petition came up before Justice P.Sathasivam, the counsel for the respondent Mr.P.S. Raman brought to the notice of the said Bench about the orders passed on 5.12.2003 by this Bench. Ultimately, the said writ petition was dismissed on 12.12.2003 on the basis of various judgments of this Court as well as this Division Bench order dated 5.12.2003. Nothing was mentioned by the petitioner before the said Bench that the said order dated 5.12.2003 was nullity on the basis of doctrine of bias. Only on 9.12.2003, he prepared an affidavit and filed the same along with the letter dated 15.12.2003 making allegations against this Bench, particularly against M.Karpagavinayagam, J.

As a matter of fact, as noted above, the main matter posted before this Bench was adjourned for several dates to enable both Karuppan and the counsel for the other parties would argue at full length. It is to be noted in this context that whenever Karuppan argued referring to the alleged misdeeds of Sivanthi Adityan invariably, Mr.P.S. Raman, the counsel of Sivanthi Adityan would object to the same. On those occasions, this Bench had asked Mr.P.S.Raman not to interrupt with the arguments of Mr.Karuppan as he should be allowed to make his submission in his own way as he felt sincerely that he was sidelined and prevented from participating in the tournaments only due to the intervention of Sivanthi Adityan. Despite that, to attribute motive against one of us stating that one of us was biased towards Sivanthi Adityan for the first time on 15.12.2003 is not only unwarranted but also unethical. Therefore, we are of the considered opinion that the prayer sought for recalling of the order dated 5.12.2003 is liable to be rejected and accordingly, rejected.

32. Before parting with this case, we are to deal with yet another sad feature.

33. As indicated above, the petitioner, party-in-person, instead of realising his mistake with reference to the contempt committed by him against the sitting Judges of this Court including the Hon'ble Chief Justice, has

indulged in mud-throwing on the Judges of this Bench, feeling disappointed as he was unable to get any favourable order from this Bench.

34. In this context, it would be worthwhile to refer to the various statements made by the petitioner in the letter which has been placed before this Bench on being mentioned as well as in the affidavit, which were read over to this Court by Karuppan. The relevant statements in the letter are as follows:

"Only now after the furore did we realize why Mr.Justice Karpagavinayagam who never sat in the writ portfolio all these years was asked to adjudicate this case. Needless to state that the other companion Judge Mr.Justice Ashok Kumar was just elevated months back and is yet to sit in the writ jurisdiction.

Mr.Justice Karpagavinayagam went on to hear piece meal once in a week or even longer just for about 45 minutes, despite my plea that I wanted to practice shooting and that I was vying for taking part in the Olympics. .....The learned Judge was following novel procedure in the course of hearing which is not known hitherto. ..... On Monday it was mentioned to Mr.Justice Karpagavinayagam and yourself, that the judgment rendered by Mr.Justice Karpagavinayagam's bench was a hit by the doctrine of bias for he had sat in judgment in an issue where his family friend and his son were involved and that the judgment was a nullity."

35. The following are the statements of Karuppan as contained in the affidavit dated 9.12.2003:

"I learnt from the inquisitive and concerned quarters that Sivanthi Adithyan and his son Balasubramania Adithyan are close friends of the Hon'ble Presiding Judge. I also learnt that due to such a relationship, the Hon'ble Judge was invited to preside over a function organized by Sivanthi Adithyan and his son. .... To my shock and disbelief I found in the issue dated 29.10.1999 in the first page the presiding Judge of this case had presided over the said function and had paid encomiums and tributes to Sivanthi Adithyan and his son. .... This depicted that there had been a long standing relationship between the presiding Judge and Sivanthi Adithyan. ... He also praised Sivanthi and his son. In this background when the Chief Justice constituted a special bench presided over by him to hear these matter, the presiding judge should have recused himself. Or else in course of hearing fairly informed about this relationship with the respondent and his son, who were the subject matter of all the four cases. ..... In the light of this relationship the presiding officer was disqualified from the day one from hearing this case. Thereby the entire exercise is a nullity. The judgment is void-ab-initio. ..... There was absolutely no justification for inviting the Advocate General to address the Court on maintainability. ... This order is a classic illustration of Coram Non Judice. ..... The judgment was not issued on the pronounced day. We were given to understand that the same was taken over the residence of the presiding Judge for certain corrections. After pronouncement it cannot be corrected for the Judge becomes functus officio. .... On reading the judgment now, a portion praising Sivanthi Adithyan and his great qualities said to have been read out while pronouncing the judgment was not to be found. The such alteration of the judgment after pronouncement is unjustified and warrants the recalling of the same."

36. The above statements contained both in the letter and in the affidavit which were read over to this Court would make out the following allegations in gist:
(i) Both Justice M.Karpagavinayagam and Justice S.Ashok Kumar never sat in the writ portfolio earlier and as such, posting of the writ petitions before the said Judges is wrong.
(ii) The Bench went on to hear piecemeal once in a week and has followed novel procedure in the course of hearing which is not known hitherto. There is no justification to invite Advocate General to address the Court on maintainability.
(iii) The Presiding Judge participated in the function arranged by Sivanthi Adityan and paid encomium to Sivantthi Adityan and his son in the year 1999. Thus, there had been a long-standing relationship between the Presiding Judge and Sivanthi Adityan. In the function, he praised Sivanthi Adityan and his son. In that situation, the Presiding Judge should have recused himself when the matter was posted before his Bench. As such, failure to do so would result in the disqualification on the part of the Presiding Judge to hear the case.
(iv) The judgment was read over by the Presiding Judge in the open Court. In that, a portion praising Sivanthi Adityan and his great qualities was also read out. But, on the same date, the Presiding Judge took the judgment to his residence and corrected the same and after correction, the portion praising Sivanthi Adityan is not to be found. Therefore, the alteration of the judgment after pronouncement by the Presiding Judge is unjustified.

37. The crux of the statements made in the letter as well as in the affidavit by Karuppan would certainly be construed to be contumacious throwing mud on this Bench, particularly on the Presiding Judge of this Court.

38. The first allegation is that both the Presiding Judge and the companion Judge never sat in the portfolio of writ petitions. This is factually wrong. The Presiding Judge was elevated to the Bench in 19 96. He was sitting as single Judge in disposal of writ petitions final disposal for various periods. He was also sitting along with senior Judge in the disposal of Writ appeals for some period. The companion Judge also though has been recently elevated, had been entrusted with the work of writ petitions and the same was done by him. This allegation against the Presiding Judge as well as against the companion Judge with reference to their competence to deal with the writ petitions is highly unwarranted. Further, the petitioner who has got a standing for about 25 years should not have resorted to criticise the Hon'ble Chief Justice over his act of allocation of portfolios to the Judges concerned as it is his prerogative right to vest the portfolio with the particular Judge.

39. The second allegation is that this Bench adopted a novel procedure. It is quite unfortunate on the part of the petitioner to make such an allegation since this Court was compassionate towards the parties, especially to Karuppan, as this Court felt that he was fighting for the cause for long number of years. That was the reason as to why, though Roster has been changed, the matter was posted for several weeks unmindful of the

inconvenience caused to the Judges of this Bench who were at that time were sitting in single Judge portfolios. When this Court decided to take suo motu proceedings against the petitioner, we felt that it could be better to have in chamber and to conduct enquiry as in-camera proceeding in order to avoid embarrassment likely to be felt by Karuppan who is an Advocate. Without understanding the gracious gesture shown by this Bench, Mr.Karuppan has resorted to state in the form of affidavit that this Court adopted a novel procedure which has not been seen so far. This statement is nothing but mischievous. As a matter of fact, as indicated above, the arguments were commenced on 5.8.2003 and heard on several dates and most of the matters were heard in open Court making the other advocates to wait. Lastly, for some hearings, the matter went on as in-camera proceeding in the Chamber to deal with the suo motu proceeding taken against Karuppan. As mentioned in the main order, we have sufficiently indicated to Karuppan in the Chamber that he should not have resorted to distribution of pamphlets criticising the Judges of this Court and for that, he must realise his mistake and to file a suitable affidavit to enable this Court to drop the proceedings against him. Karuppan did not incline to understand this clue given by this Bench. However, he filed a counter-affdidavit justifying the act of distribution of pamphlets making scurrilous allegations against the Judges of this Court. In spite of the opportunities given by this Court to Karuppan to realise his mistake, he has gone to the extent of saying that it is a novel procedure adopted by this Bench without understanding the noble gesture shown by this Bench towards Karuppan. As such, the statements made by Karuppan would amount to criticising the functioning of the Judges of this Court which is quite unwarranted. Further, the Advocate General was appointed as Amicus Curiae to assist this Bench in order to ascertain the question of maintainability in the light of the objection raised by the respondent's counsel over the maintainability. The Advocate General cited number of decisions only in favour of the petitioner. Therefore, there is nothing wrong in the appointment of Amicus Curiae.

40. Thirdly, it is said that the judgment of this Bench was hit by the doctrine of bias as the Presiding Judge of this Court had participated in the function arranged by the Daily Thanthi and the Presiding Judge praised Sivanthi Adityan and his son who were sitting in the dais. Firstly, it is to be stated that this is a literary function arranged by C.P.Adhithanar Trust on behalf of the Daily Thanthi. The purpose of the function was to distribute awards to Justice M.M.Ismail, former Chief Justice of the Madras High Court and to one Kavingnar Vairamuthu who is considered to be a great poet of Tamil Nadu. It is stated that the Presiding Judge has praised Sivanthi Adityan and his son in his speech. This is factually incorrect. The Presiding Judge has never made a speech in that meeting praising Sivanthi Adityan or his son. On the other hand, he gave encomiums only to former Chief Justice M.M.Ismail and Pon.Vairamuthu, who were conferred with the award on that occasion. He also exhorted the literary personalities to motivate the people to take a vow to eradicate corruption at all levels in the light of the Gandhian concept. Therefore, to contend that the Presiding Judge was biased and he was invited for the function since he was friend to Sivanthi Adityan's family, is without basis. It is quite unfortunate to contend that the Presiding Judge praised Sivanthi Adityan and his son in his speech when the speech published in the

Daily Thanthi would show that speech was made praising only former Chief Justice and the poet Vairamuthu and no praising reference has been made about Sivanthi Adityan or his son. Further, it is to be stated that the Daily Thanthi used to invite every year the Judges of this Court and request them to give award to the literary personalities. In that way, the Presiding Judge of this Court also participated in that function in which he was given opportunity to give the award to the former Chief Justice of Madras High Court. The Presiding Judge would assert that he never maintained relationship with Sivanthi Adityan either before the said function or after the function which was held in the year 1999.

41. The last allegation is that the Presiding Judge has read out the portion in the open Court while pronouncing the judgment praising Sivanthi Adityan and his son and the same has been corrected and ultimately, that portion is not found in the judgment. This is atrocious untruth. This Court never made any observation praising Sivanthi Adityan and his son and that was not the issue raised in the matter. This Court dealt with the question with reference to maintainability. This Court never gave a finding with reference to the alleged misdeeds committed by Sivanthi Adityan and others. This Court only said that no materials have been placed by Karuppan to prove his

allegation against the respondent. As such, there is no necessity for this Court to praise Sivanthi Adityan and his son. The allegation regarding the alleged alteration is nothing but mud-slinging.

42. It is to be pointed out that on 5.12.2003, the Presiding Judge of this Court pronounced the judgment by reading the entire portion of the judgment and the same took about 45 minutes. On that day, Karuppan was not present. But, his junior was present. As requested by his junior, on that day, Karuppan's presence was dispensed with. In such a situation, there is no reason as to why Karuppan had to say that the judgment was taken to the residence of the Presiding Judge and alteration was made removing the portion praising Sivanthi Adityan and his son. This, in our view, shows that Karuppan wanted to make out something or the other to attribute motive and to throw mud on the Bench.

43. The chequered history of this case and the conduct of the petitioner, the party in person would clearly show that the petitioner has made a disparaging statement which is calculated to interfere with the due course of justice and proper administration of law. Even when the arguments were going on on 19.12.2003, Mr.Karuppan would submit that he would send the details of the meetings participated by the Presding Judge in several functions to the President of India as well as to the Supreme Court and complain about the Presiding Judge. From this, it is clear that Mr.Karuppan has indulged in adopting browbeating and bullying methodology to threaten the Judges of this Court.

44. As we have seen earlier, he criticised the order of the Supreme Court when the matter was argued before Sirupurkar, J. Bench and the said Bench imposed costs of Rs.2,000/- for his act of criticising the Supreme Court

condemning his conduct. Thereafter, he criticised Justice Sirpurkar himself in the review application and the same has been dismissed by the said Bench condemning his act as reprehensible. Even after the dismissal of the S.L.P., challenging the said order, Karuppan has not cared to file an application for deletion of costs or to pay the costs. Even thereafter, he bent upon seeking for transfer from Bench to Bench making some sort of allegations. The letter addressed to the Hon'ble Chief Justice placed before us as well as the affidavit read out to us would contain the disparaging remarks against the Judges of this Court which would show that he made insinuation and criticism with reference to the functioning of the Hon'ble Chief Justice as well. As such, it is obvious that Karuppan has been continuing to make outrageous criticisms and allegations against the Supreme Court as well as against the First Bench, against the Second Bench and ultimately, against this Bench as well. This is purely contempt.

45. Taking action for contempt of Court against an advocate, who is practising for about 25 years and who happened to be the leader of Bar, shall be regarded as an extreme measure. It is highly painful for this Bench to initiate contempt proceeding against a member of the Bar as it pleases none. However, to protect the majesty of law, it becomes the duty of this Court, though painful, to start the cause of taking action for contempt mainly for preserving its dignity. No one including an Advocate who himself is an officer of the Court can claim immunity from the operation of the law of contempt, if his conduct in the Court interferes with or is calculated to obstruct the due course of justice.

46. In the above circumstances, we feel that the allegations contained in the letter and the affidavit filed by Karuppan would prima facie show that the petitioner has committed contempt which necessitated this Court to take suo motu contempt proceeding against him and to issue show cause notice to the petitioner. Accordingly, the suo motu proceedings are initiated by exercising the suo motu power conferred and show cause notice returnable in four weeks is issued to the petitioner asking him to give explanation as to why he should not be punished for the said offence under the Contempt of Courts Act.

47. Since this Court feels that the petitioner has been committing contempt of this Court regularly and repeatedly, it would be better to issue notice to the Advocate General, the President of Bar Association and the President of Advocates' Association, so that their assistance could be sought to decide about the various issues arising in the matter. It would also be better to hear the matter by a larger Bench and dispose of the same in view of the importance attached to the issue. Therefore, notice is issued to the Advocate General, President of Bar Association and President of Advocates' Association. The Registry is directed to place the matter before My Lord the Hon'ble the Chief Justice to post the same before the appropriate Bench for hearing and disposal.

Index: Yes
Internet:Yes

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W.P.No.20425 of 1999 etc.

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